

EX PARTE OR LATE FILED

93-253

National Strategies, Inc.

Twelfth Floor
888 Seventeenth Street, N.W.
Washington, D.C. 20006
Telephone 202/429-6744
Fax 202/296-2962

David K. Aylward

DOCKET FILE COPY ORIGINAL
RECEIVED

MAR - 9 1994

MEMORANDUM FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

March 1, 1994

TO: Diane Cornell, Bob Pepper
FROM: David Aylward *DA*
SUBJECT: Minority Data

In response to your request for data, I just received the attached fax from the NAACP. I hope this is helpful to you.

Attachment

No. of Copies rec'd
List ABCDE

0+1

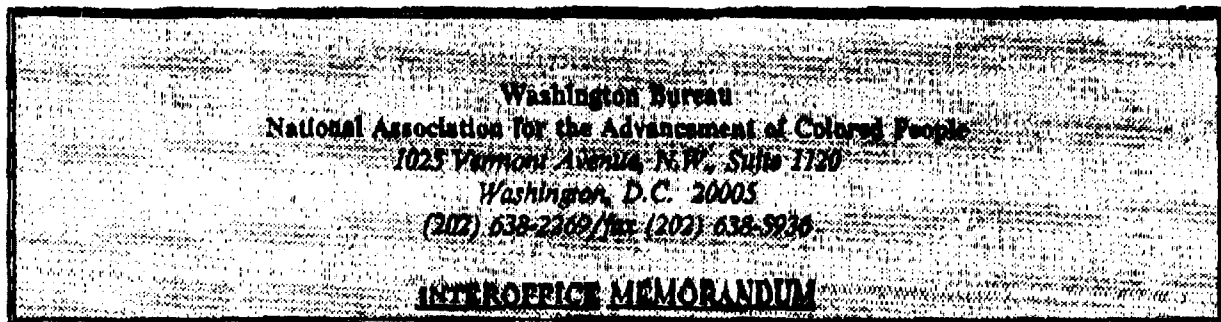
03/01/94

15:36

WASHINGTON BUREAU NAACP

NO. 949

002



TO: David Aylward
National Strategies, Inc.

FROM: Wade Henderson *WH* DATE: March 1, 1994

RE: "Information Superhighway" -- Minority Participation in the
Communications Industry

Thanks for your memorandum of February 24. Let me say at the outset that I welcome the opportunity to work with you in furtherance of expanding opportunities for African Americans and others within the communications industry.

Recently, the NAACP Board of Directors announced an overall telecommunications policy and the formation of a Communications Task Force (see enclosed resolution). The purpose of the Task Force is to guide the Association's involvement in the emerging debate over the "Information Superhighway". I am certain that you will be hearing more about this Task Force in the coming weeks.

In response to your request for information in support of minority preferences under rules governing the Federal Communications Commission (FCC), I offer the following brief report:

Minority Preferences

In 1978, the FCC released its Statement of Policy on Minority Ownership of Broadcast Facilities, 68 F.C.C. 2d 979 (1978). The Commission noted that although minorities comprised approximately 20% of the U.S. population, less than one percent of the 8,5000 commercial radio and television stations then operating were minority-controlled¹. The Commission also determined that diversity of ownership is in the

¹Section 309 (i) (3) (C) (ii) of the Communications Act, as amended, defines minority group to include African Americans, Hispanics, Native Americans, and Asian & Pacific Islanders.

03/01/94

15:37

WASHINGTON BUREAU NAACP

NO. 949

003

national interest; it suggested the need for a policy guidelines to address the problem of underrepresentation. The Statement concluded:

We are compelled to observe that the views of racial minorities continue to be inadequately represented in the broadcast media. This situation is detrimental not only to the minority audience but to all of the viewing and listening public. Adequate representation of minority viewpoints in programming serves not only the needs and interests of the minority audience. It enhances the diversified programming which is a key objective not only of the Communications Act of 1934 but also of the First Amendment. 68 F.C.C. 2d at 980-981.

To foster minority participation in ownership of mass media facilities, the Commission determined to award a "minority preference" to minority-owned or controlled applicants who pledged to be integrated into the management of the proposed station. In support of its action, the Commission found a link between ownership of stations by members of minority groups and the stations' programming practices. The Commission reasoned that because, in mass media, the licensee ultimately is responsible for identifying and serving the needs of its audience, fostering minority ownership would increase diversity in programming. See F.C.C. Minority Ownership Task Force, Report on Minority Ownership in Broadcasting I (1978).

The FCC's findings with regard to minority preferences were upheld by the United States Supreme Court in Metro Broadcasting, Inc. v. F.C.C. 110 S.Ct. 2997 (1990). The Court found "a host of empirical evidence" supporting the judgment that there is a link between the ownership of stations by racial minorities and the stations' responsiveness to minority-community issues. The Court explained that evidence suggests that an owner's minority status influences the selection of topics for news coverage and the presentation of editorial viewpoint. 110 S.Ct. 3017.

Regrettably, the FCC's minority preference has been only partially successful. In 1978, one percent of broadcast stations were minority-controlled. Although in 1993 station totals had risen to 12,851 (see, FCC's Broadcast Station Totals, January 31, 1993), the Minority Telecommunications Development Program (MTDP) of the National Telecommunications and Information Administration (NTIA), reported that in 1992, only 2.8% of mass media facilities were minority-controlled, down from 2.9% in 1990 and 1991. In the 1991-1992 period, minority ownership increased by 26 stations, but decreased by 21 stations through sale, transfer or business failure. Minority ownership of mass media facilities have increased by a meager 1.8% in the fifteen years of the Commission's preference.

Gender Preference

In Lamprecht v. F.C.C. 958 F.2d 382 (D.C. Cir. 1992) the Court of Appeals held that the FCC had failed to show that its sex-preference policy was substantially related to achieving diversity on the air waves. Therefore, the court concluded that the FCC sex-

03/01/94 15:38 WASHINGTON BUREAU NAACP

NO. 949 004

preference policy was unconstitutional. The Court relied heavily on a study conducted by the Congressional Research Service (Minority Broadcast Station Ownership and Broadcast Programming: Is there a Nexus?) in reaching its conclusion. That study set forth empirical evidence to prove that female owners were no more likely than white male owners to broadcast programs that are related to achieving diversity. The empirical data pertaining to minorities in Metro Broadcasting was starkly different. As previously noted, the Supreme Court upon reviewing the data concluded that there was linkage between minority-owned stations and the stations' programming practices.³

Conclusion

Based upon the foregoing analysis, the NAACP believes that the FCC has adequate authority under present law to implement minority ownership preferences throughout its programs. We have attached a bibliography of relevant studies which may be of interest to you. If additional information is needed, please do not hesitate to contact us.

³Everald Thompson, Esq., of the NAACP Legal Department assisted in the preparation of this memorandum.

03/01/94

15:38

WASHINGTON BUREAU NAACP

NO. 949

025

**BIBLIOGRAPHY OF STUDIES
INVOLVING MINORITY PARTICIPATION
IN THE
COMMUNICATIONS SECTOR**

- o Task Force Report 1; Winner, **Deregulation and Market Failure in Minority Programming: The Socioeconomic Dimensions of Broadcast Reform**, 8 comm/Ent LJ329, 426 n 516 (1986).
- o FCC Minority Ownership in Broadcasting 1 (1978).
- o Telecommunications Minority Assistance Program, Public Papers of the Presidents, Jimmy Carter, Vol.1, Jan 31, 1978, pp. 252, 253 (1979).
- o Minority Participation in the Media: Hearings before the Subcommittee on Telecommunications, Consumer Protection, and Finance of the House Committee on Energy and Commerce, 98th Cong., 1st Sess. (1983).
- o Hearing on HR 1155 before the Subcommittee on Telecommunications Consumer Protection, and Finance of the House Committee on Energy and Commerce, 98th Cong. 2nd Sess. (1994). No legislation was passed.
- o CRS, **Minority Broadcast Station Ownership and Broadcast Programming Is There a Nexus** (June 29, 1988).
- o See J. Jeter, **A Comparative Analysis of the Programming Practices of Black-Owned Black-Oriented Radio Stations and White Owner Black-Oriented Radio Stations** 130, 139 (1981) University of Wisconsin-Madison).
- o M. Spitzer, **Justifying Minority Preferences in Broadcasting** California Institute of Technology Working Paper No. 718, pp 19-29 (March 1990).
- o M. Fife, **The Impact of Minority Ownership on Minority Images in Local TV News**, in **Communications: A Key to Economic and Political Change, Selected Proceedings from the 15th Annual Howard University Communications Conference** 113 (1986) (Survey of four Standard Metropolitan Statistical Areas).
- o M. Fife, **The Impact of Minority Ownership on Broadcast News Content: A Multi-Market Study** 52 (June 1986) (report submitted to National Association of Broadcasters)
- o Brief for Capital Cities/ABC, Inc. as Amicus Curiae in No. 89-453, p.11 n.19 (number of tv commercial licenses awarded to minorities since 1973).
- o Honig, **The FCC and Its Fluctuation Commitment to Minority Ownership of Broadcast Facilities**, 27 HOW LJ 859, 875, n. 87 (1984) (Afro Americans tend to own least desirable AMS).

03/01/94

15:39

WASHINGTON BUREAU NAACP

NO. 949

006

THE NAACP TELECOMMUNICATIONS TASK FORCE

WHEREAS, the NAACP is one of the nation's leading advocates of equal opportunity and fairness in the communications industry; and

WHEREAS, throughout its participation in hundreds of Federal Communications Commission (FCC) cases and proceedings since 1976, the NAACP's efforts have significantly aided in the development of the FCC's broadcast and cable EEO rules; and

WHEREAS, the NAACP's past record in communications policy reflects the Association's ongoing concern about the social impact of program content and the ability of African Americans to participate in the ownership and employment the industry; and

WHEREAS, the NAACP's record in the communications area includes the following accomplishments:

1) The NAACP is responsible for the FCC's historic rulings of February 1, 1994, doubling forfeitures for EEO noncompliance and holding that racial stereotyping in hiring practices puts a broadcast license at stake; and

2) The NAACP has significantly contributed to the evolution of the FCC's broadcast and cable minority ownership policies, culminating in the 1990 Supreme Court decision, Metro Broadcasting, Inc. v. FCC, which upheld the constitutionality of those policies; and

3) Since 1981, through its Fair Share Program, the NAACP has been responsible for the creation of thousands of jobs and business opportunities for African-Americans in the communication and entertainment industries; and

WHEREAS, the field of telecommunications -- including the future "Information Superhighway" -- is America's largest growth industry, which includes telephone, cable television, mobile services, satellite, and computer networking; and

WHEREAS, the Information Superhighway is the "new Frontier of civil rights concerns in the 21st century; and

WHEREAS, federal legislation likely to be enacted in 1994 will enable telecommunication companies to enter the program content business through either the acquisition of cable TV and broadcast companies or the provisions of their own proprietary video and/or electronic publishing services; and

WHEREAS, there is a need to revise or adopt new regulations governing the telecommunications industry with respect to equal employment opportunities and market entry opportunities for small and minority owned businesses.

03/01/94

15:40

WASHINGTON BUREAU NAACP

NO. 949

007

WHEREAS, equal employment opportunity and market entry for small and minority-owned business, heretofore, has not been part of the policy debate with respect to the "Information Superhighway"; and

WHEREAS, the cost user friendliness, and accessibility of the "Information Superhighway" to the general public and the African American community, in particular, is of vital concern to the NAACP; and

WHEREAS, the well-informed, well-planned and aggressive intervention by the NAACP is essential to the delivery to African Americans of the many potential benefits of the "Information Superhighway", including ownership of prospective new businesses;

BE IT THEREFORE RESOLVED, that the creation of the NAACP Telecommunications Task Force is authorized by the NAACP Board of Directors in cooperation with the NAACP Executive Director; and

BE IT FURTHER RESOLVED, that the Chairman of the Board in consultation with the Executive Director, is authorized to appoint the members of the Telecommunications Task Force and to designate its officers, that the members may be drawn from within and without the NAACP, and that all members shall serve without compensation.

BE IT FURTHER RESOLVED, that the mission of the Telecommunications Task Force shall be to study, evaluate, and make recommendations to the Board of Directors and National staff concerning the public policies in the telecommunications field which the NAACP should endorse and the most effective strategies for effectuating those policies.

BE IT FURTHER RESOLVED, that the policy areas to be examined by the Telecommunications Task Force shall include, but not be limited to, the following:

- A. Universal Service: insuring that all telecommunications services are affordable and accessible, tested and deployed, without racial or demographic redlining, and designed to narrow rather than widen the enormous gap between the information wealthy and the information poor;
- B. Employment Practices: extending to telecommunications companies the nondiscrimination and affirmative action rules and policies applicable to broadcasting and cable, focusing especially on training minorities, women and persons with disabilities for upper management and professional positions;
- C. Market Entry: lowering entry barriers for African Americans and other minority businesses and organizations through such means as marketing and technical assistance programs, tax and divestiture

03/01/94

15:40

WASHINGTON BUREAU NAACP

NO. 949

008

incentives, incubator programs and the creation of revolving capital funds; and

- D. Educational Technology: developing capital assistance programs to introduce computers and computer networking to public school systems, with special emphasis on low income communities and youth who are academically at risk.

BE IT FURTHER RESOLVED, that the Telecommunications Task Force shall work with the NAACP's Economic Development office, the Washington Bureau, and the office of General Counsel, to implement the purposes of this resolution.

February 19, 1994